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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/616,622

07/10/2003

Daniel M. Lafontaine

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28075 7590 06/17/2010  
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EXAMINER

YABUT, DIANE D

ART UNIT

PAPER NUMBER

3734

MAIL DATE

DELIVERY MODE

06/17/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<p align="center"><b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b></p>	<b>Application No.</b> 10/616,622	<b>Applicant(s)</b> LAFONTAINE, DANIEL M.	
	<b>Examiner</b> DIANE YABUT	<b>Art Unit</b> 3734	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 03 June 2010 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: 1-10, 13, 16-29 and 31-41.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/TODD E. MANAHAN/  
 Supervisory Patent Examiner, Art Unit 3734

Continuation of 11. does NOT place the application in condition for allowance because: Applicant's arguments filed 06/03/2010 have been considered but are not considered persuasive.

Applicant argues that Huebsch discloses a device 200 in a cylindrical non-collapsed delivery configuration and a bi-conical collapsed deployed configuration rather than a conical non-collapsed delivery configuration and disc-shaped collapsed deployed configuration. However, as seen in Figure 16 Huebsch disclose a non-collapsed or not fully folded delivery configuration that is "generally conical" as recited by the claims and has a center portion (near collapse actuator 232) that is distally spaced from a periphery, and in its fully deployed, collapsed, or folded position Figure 17 Huebsch discloses a "generally disc shape" and therefore reads on the claims.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. Applicant argues that Huebsch does not disclose the distal end 232 of the collapse actuator assuming a deformed profile solely in response to a sufficient proximal force because it necessitates not only a proximal force but also a distal force. This is conceded by the examiner, and the distal end collapse actuator of Huebsch necessitates both a proximal force and a distal force because it is not deformable, and therefore Huebsch is modified in view of Hart's deformable distal end 301 of a collapse actuator that facilitates withdrawal.

Applicant also argues that Huebsch device 200 appears to be free of a backing or "something forming a back." The examiner asserts that a "backing" may considered to be "aid or support of any kind" or "something that forms the back or is placed at or attached to the back of anything to support, strengthen, or protect it" and the device 200 of Huebsch forms the backing of a septal defect and therefore reads on this limitation.

In addition applicant generally argues that Hart does not teach a collapse actuator distal end that deforms solely in response to proximal force on the collapse actuator. However, as best shown in Figures 28E-28H, Hart teaches that the detachable distal end 301 assumes a deformed profile during withdrawal, and therefore reads on this limitation.

Next, applicant generally argues that Lafontaine does not appear to disclose fibrous tissue engaging members entangling the backing when the backing is in the collapsed position and therefore would not be obvious to combine with Huebsch since it is the interior hook 370 which engage the interior pile 372 and not the exterior hooks 366. However, it is noted that the features upon which applicant relies (i.e., exterior hooks engaging) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. The examiner asserts that having the backing of Lafontaine on the exterior surface of Huebsch would still allow the interior hooks to entangle when the backing is collapsed.

Lastly, applicant argue that Hart would enlarge the area of the puncture wound in the embodiment of Figures 15-26. The examiner cites primarily Figures 28E-28H of Hart, and therefore the argument is irrelevant, and in addition the examiner maintains that the teaching of Hart to remove the actuator "without affecting the outside diameter of the access device near the incision in the body passage" (col. 3, lines 14-19) suggests to one of ordinary skill in the art that dimensions of the actuator are to be considered to prevent application of excessive forces to the tissue.